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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,603	10/17/2003	Harold A. Heitzmann	ENDICOR.5CP2C2	2431
20995	7590	03/29/2006	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP			TRUONG, KEVIN THAO	
2040 MAIN STREET			ART UNIT	
FOURTEENTH FLOOR			PAPER NUMBER	
IRVINE, CA 92614			3734	

DATE MAILED: 03/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/688,603

Applicant(s)

HEITZMANN ET AL.

Examiner

Kevin T. Truong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on Pre. Amendt. 10/05/2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 52-76 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 52-76 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/2/06; 10/5/05; 12/21/03

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION*****Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 52-76 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-32 of U.S. Patent No. 6,666,874. Although the conflicting claims are not identical, they are not patentably distinct from each other because the relatively subject matter claimed in the instant application such as an elongated flexible tubular body, a rotatable element extending through the flexible body and a rotatable tip connected to the distal end of the rotatable element. These recitations would have been obvious in view of the relatively detailed subject matter of the patent claims.

3. Claims 52-76 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-26, 45, and 46 of U.S. Patent No.

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6,623,495. Although the conflicting claims are not identical, they are not patentably distinct from each other because the relatively subject matter claimed in the instant application such as an elongated flexible tubular body, a rotatable element extending through the flexible body and a rotatable tip connected to the distal end of the rotatable element. These recited limitations would have been obvious in view of the relatively subject matter of the patent claims.

4. Claims 52-76 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6, 9-19, 30-34, 37-52, 55-70, 73-83 of U.S. Patent No. 6,482,217. Although the conflicting claims are not identical, they are not patentably distinct from each other because the relatively subject matter claimed in the instant application such as an elongated flexible tubular body, a rotatable element extending through the flexible body and a rotatable tip connected to the distal end of the rotatable element. These recited limitations would have been obvious in view of the relatively subject matter of the patent claims.

5. Claims 52-76 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 and 9-13 of U.S. Patent No. 6,454,779. Although the conflicting claims are not identical, they are not patentably distinct from each other because the relatively subject matter claimed in the instant application such as an elongated flexible tubular body, a rotatable element extending through the flexible body and a rotatable tip connected to the distal end of the rotatable element. These recited limitations would have been obvious in view of the relatively subject matter of the patent claims.

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6. Claims 52-76 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5, 7, 15-21, and 31-34 of U.S. Patent No. 6,206,898. Although the conflicting claims are not identical, they are not patentably distinct from each other because the relatively subject matter claimed in the instant application such as an elongated flexible tubular body, a rotatable element extending through the flexible body and a rotatable tip connected to the distal end of the rotatable element. These recited limitations would have been obvious in view of the relatively subject matter of the patent claims.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 52-76 are rejected under 35 U.S.C. 102(e) as being anticipated by Passafaro et al. (U.S. 6,56,046).

Passafaro et al discloses in figures 1-10, a flexible tubular body (32); a rotatable element (52) extending through the flexible tubular body (32); a rotatable tip (54) being connected to distal end of rotatable member (52), wherein the rotatable tip (54) being rotatable about the rotational axis relative to the flexible tubular body (32); a vacuum source (44) being coupled to the proximal of the flexible tubular

body (32); a guidewire (46) extending through the rotatable element (52); a control mounted in the handle (42). Note in figure 3, wherein an axially extending annular space (at 50) being defined between the flexible tubular body (32) and the rotatable element (52) and wherein the flexible tubular member (32) has first cross sectional area and the annular space (at 50) has a second cross sectional area such that the second cross sectional area is inherently capable of being at least 35% of the first cross sectional area and furthermore, cutting member (74) of rotatable tip (54) is considered at least partially serrated.

### ***Conclusion***

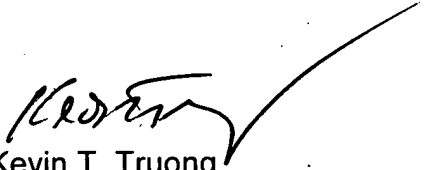
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Findaly, III et al. (U.S. 6,790,215) discloses a device for removing material from a body lumen. Nash et al. (U.S. 6,843,797) discloses a system for opening a lumen in an occluded blood vessel. Peters et al. (U.S. 6,656,195) discloses a rotary tissue cutting instrument.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin T. Truong whose telephone number is 571-272-4705. The examiner can normally be reached on Monday-Thursday from 8:00 AM to 6:00 PM..

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kevin T. Truong  
Primary Examiner  
Art Unit 3731

ktt